

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID DeSANTIS,

Plaintiff,

-v-

5:09-CV-530 (NAM/GHL)

**THE STATE OF NEW YORK and JUDGE
KIMBERLY SEAGER,**

Defendants.

APPEARANCES:
David DeSantis
Plaintiff, *Pro Se*

Hon. Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Presently before the Court is the Report and Recommendation of United States Magistrate Judge George H. Lowe (Dkt. No. 10) recommending that plaintiff's amended complaint (Dkt. No. 9) be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). Plaintiff has submitted an objection (Dkt. No. 11). In view of plaintiff's objection, pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducts a *de novo* review of the matters raised in the Report and Recommendation. As set forth below, the Court accepts the Report and Recommendation and dismisses the action.

Plaintiff's initial complaint (Dkt. No. 1) sought relief against Oswego County Family Court Judge Kimberly Seager and the State of New York. Plaintiff moved (Dkt. No. 2) for leave to proceed *in forma pauperis*. United States Magistrate Judge George H. Lowe prepared a Report and Recommendation (Dkt. No. 4) in which he granted *in forma pauperis* status and, upon reviewing the complaint, concluded that Judge Seager enjoyed absolute immunity for the actions

alleged in the complaint; that the claim for money damages against New York State was barred by the Eleventh Amendment; and that there was no ground for any other relief. This Court agreed, and issued a Memorandum-Decision and Order (Dkt. No. 8) holding that the action would be dismissed automatically within 30 days unless within that time period plaintiff filed a non-frivolous amended complaint that stated a claim on which relief may be granted.

Thereafter, plaintiff submitted the amended complaint (Dkt. No. 9) that is now before the Court. As noted by Magistrate Judge Lowe, the amended complaint asserts that plaintiff's constitutional rights were violated by "a judge in the Superior Court of Oswego County State of New York" and fails to state when or how the alleged violations occurred. On this basis, Magistrate Judge Lowe recommended dismissal (Dkt. No. 10).

In his objection (Dkt. No. 11), plaintiff sets forth his allegations in more detail. In view of plaintiff's *pro se* status, the Court considers the matters raised in the objection as well as the amended complaint. The Court accepts as true all allegations made in the amended complaint and objection, and draws all reasonable inferences in plaintiff's favor. *See Goldstein v. Pataki*, 516 F.3d 50, 56 (2d Cir. 2008). The Court reads plaintiff's *pro se* papers liberally and interprets them to raise the strongest arguments that they suggest. *See McPherson v. Coombe*, 174 F.3d 276, 280 (2d Cir.1999). The objection merely restates and expands upon the allegations in the initial complaint. As with the initial complaint, all of the claims set forth in the amended complaint and objection are barred by judicial immunity and the Eleventh Amendment. In particular, all allegations against Judge Seager relate to actions taken in her official capacity. Thus, upon *de novo* review, the Court finds that the amended complaint is frivolous and fails to state a cause of action. *See* 28 U.S.C. § 1915(e)(2)(B).


It is therefore

ORDERED that the Report and Recommendation (Dkt. No. 9) of United States Magistrate Judge George H. Lowe is accepted; and it is further

ORDERED that the action is dismissed.

IT IS SO ORDERED.

Date: August 17, 2009
Syracuse, New York

A handwritten signature in black ink, appearing to read "Norman A. Mordue", written over a horizontal line.

Norman A. Mordue
Chief United States District Court Judge

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